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Supreme Court, U.S.
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

MATTHEW A. CRAIG,

Petitioner

v.

JOHN BRIGADIER, SUSAN M. BRIGADIER, DAVID L. BRIGADIER, JACQUELYN F. LENSON, RISER FOODS COMPANY, d/b/a GIANT EAGLE, INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. This Court and several circuits have previously held that the Labor Management Relations Act *only* preempts a claim where the claim requires interpretation of the terms of a collective bargaining agreement. Here, the Sixth Circuit acknowledged that Petitioner's complaint relies exclusively upon Ohio law but concluded that, because resolution of the claims in the complaint will require a court to address relationships created through the collective bargaining process and because the asserted harm arises out of employment generally governed by a collective bargaining agreement, the Labor Management Relations Act preempts the claims even though no specific terms require interpretation. Does the standard applied by the Sixth Circuit for Labor Management Relations Act preemption directly conflict with prior decision of this Court and other circuits such that this Court should grant certiorari to resolve the conflict?

II. This Court has previously held that examining the existence or severity of the harm of discharge alleged in a complaint does not require a court to evaluate the parameters for proper and improper discharge under a collective bargaining agreement. Here, the Sixth Circuit held that "examining the existence and...severity" of the harm of

discharge as alleged in Petitioner's complaint will "require the court to evaluate the parameters for proper and improper discharge" under a collective bargaining agreement and, therefore, the Labor Management Relations Act preempts the claims set forth in the complaint. Does the Sixth Circuit's decision directly conflict with this Court's prior decision such that this Court should grant certiorari to resolve the conflict?

III. This Court has previously held that evaluating the existence of an alleged improper motive of a defendant does not require a court to examine the terms of a collective bargaining agreement. Here, the Sixth Circuit held that the complaint's assertion of the improper motive of certain Respondents for committing various torts against Petitioner would "require the court to assess the parameters of the current working environment and the functioning of various grievance procedures" and, therefore, causes the Labor Management Relations Act to preempt the claims. Does the Sixth Circuit's decision directly conflict with this Court's prior decision such that this Court should grant certiorari to resolve the conflict?

IV. The Labor Management Relations Act only applies to suits for breach of a collective bargaining agreement between an employer and a labor organization. Here, the Sixth Circuit held that the Labor Management Relations Act preempted Petitioner's state law tort claims against persons who were neither associated with any employer nor labor organization at issue herein. Does the Sixth Circuit's decision directly conflict with doctrine of this Court and decisions of other circuits such that this Court should grant certiorari to resolve the conflict?

V. 28 U.S.C. § 1654 and federal appellate court decisions hold that any person may conduct his/her own case in federal court to the same extent as if represented by counsel. Fed. R. App. P. 34(a) provides a general entitlement to oral argument on appeal. Here, as it does in virtually all cases involving pro se litigants, the Sixth Circuit denied Petitioner's request for oral argument. Is the Sixth Circuit's standing policy of denying oral argument in cases involving pro se litigants unjust, run contra to 28 U.S.C. § 1654 and the right of self-representation otherwise expressed by prior judicial decisions of this Court and other circuits, and conflict with Fed. R. App. P. 34(a) and the implementation of Fed. R. App. P. 34(a) by other circuits such that this Court should grant certiorari to determine the

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DECISIONS BELOW

The Sixth Circuit's decision below is unpublished. The District Court's decision below is also unpublished, but appears on Westlaw under the citation: 2006 WL 840364.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered an order affirming the district court below on June 4, 2007. With leave of court, Petitioner filed a *Petition for Rehearing* with the Sixth Circuit on July 3, 2007. The Sixth Circuit denied the *Petition for Rehearing* on July 10, 2007. This Court has jurisdiction to review the decisions below pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 301 of the Labor Management Relations Act (29 U.S.C. § 185) provides, in pertinent part:

> (a) Venue, amount, and citizenship
>
> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the

citizenship of the parties.

28 U.S.C. § 1654, entitled "Appearance personally or by counsel," provides:

> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

STATEMENT OF THE CASE

I. Petitioner's Employment with Riser Foods Company.

Respondent Riser Foods Company, a retail grocery chain doing business as Giant Eagle, Inc. (hereinafter "Riser") hired Petitioner Matthew A. Craig (hereinafter "Craig") as a Part-Time Grocery Clerk for its retail store #0185 located in Middleburg Heights, Ohio (hereinafter "0185"), and Craig began work on July 27, 2003. (First Amended Complaint ¶10). Upon entering into the employment relationship with Riser, Craig became subject to a collective bargaining agreement (hereinafter "the Agreement") by and between Riser and United Food & Commercial Workers Union Local No. 880 (hereinafter "UFCW"). (First Amended Complaint ¶9). Riser regularly employed Craig at 0185 until his discharge on July 1, 2004. (First Amended Complaint ¶11). Sometime after Riser hired Craig,

Riser hired Respondent John M. Brigadier to work at 0185.

II. Respondents commit the torts of slander, libel, tortious interference with an employment/contractual relationship, and civil conspiracy against Craig.

Sometime before June 25, 2004, without any provocation or notice to Craig, John M. Brigadier falsely and maliciously alleged to others including, but not limited to, Respondents Sue M. Brigadier, David L. Brigadier, Jacquelyn F. Lenson (hereinafter "Lenson"), and two (2) persons identified by John M. Brigadier in a written statement who are not parties to this action, that Craig had committed sexual harassment against him. (First Amended Complaint ¶21; *First Affidavit of Matthew A. Craig* ¶¶14-16, District Court Docket Item 28, Exhibit 'D'; *Unsworn Declaration of Jacquelyn Lenson Baon*, Exhibit 'A,' District Court Docket Item 26). John M. Brigadier's motive in making the false and unprovoked allegations was to injure Craig's contractual relationship with Riser and to secure a more lax working environment for himself under the supervision of a more lenient supervisor. (First Amended Complaint ¶¶22, 64).

Upon receiving the false allegations, Sue M. Brigadier and David L. Brigadier caused the further publication of the allegations to others including, but not limited to, Riser, by and through its employees, even though they knew or should have known the allegations to be specious. (First Amended

Complaint ¶¶26, 32-33; *First Affidavit of Matthew A. Craig* ¶¶14-17, District Court Docket Item 28, Exhibit 'D'; *Unsworn Declaration of Jacquelyn Lenson Baon*, Exhibit 'A,' District Court Docket Item 26). Sue and David Brigadier's motive in publishing the false allegations was to injure Craig's contractual relationship with Riser, attempt to vicariously obtain damages from Riser, and/or attempt to obtain a more lax working environment for their son John M. Brigadier. (First Amended Complaint ¶¶26, 67).

Upon receiving the false allegations, Lenson and Riser, by and through Lenson, caused the further publication of the allegations even though they knew or should have known the allegations to be specious. (First Amended Complaint ¶¶38-40, 43-45, 52-53). Lenson's publication included statements not made during the course of any legitimate investigation of the false allegations and publishing to others outside of Riser management. (*First Affidavit of Matthew A. Craig* ¶¶14-16, District Court Docket Item 28, Exhibit 'D'). Lenson's motive in publishing the false allegations was to benefit her employer, Riser, by injuring Craig's contractual relationship with Riser and thereby reducing the risk of Sue M. Brigadier and David L. Brigadier from bringing a lawsuit on behalf of John M. Brigadier against Riser. (First Amended Complaint ¶53).

In addition to perpetuating the false sexual harassment allegations, Lenson also falsely and maliciously accused Craig, in the presence of others, of having committed criminal voyeurism in relation

to a non-party employee. (First Amended Complaint ¶48).

Sometime before June 25, 2004, without any provocation or notice to Craig, *John Doe* falsely and maliciously alleged to others in written and/or oral form that Craig had ordered an employee under eighteen years of age to operate hazardous machinery in violation of federal and state laws including 29 C.F.R. § 570.63, section 4109.05 of the Ohio Revised Code, and section 4101:9-2-10 of the Ohio Administrative Code. (First Amended Complaint ¶¶56, 60). John Doe's motive in making the false allegations was to injure Craig's employment/contractual relationship with Riser and, thereby, secure a more lax working environment under the supervision of a more lenient supervisor. (First Amended Complaint ¶¶57, 61, 71, 73).

The tortious conduct of Respondents herein has subjected Craig to ridicule and has caused Craig to suffer personal humiliation, mental anguish, and degradation of his reputation that, in turn, has caused Craig to suffer personal, professional, and financial injury. (First Amended Complaint ¶¶22-23, 29-30, 33-34, 40-41, 45-46, 49-50, 54, 57-58, 61-62, 65, 69, 74, 77, 80).

III. Craig suffers discharge from employment for allegedly walking out of a meeting and thereafter pursues remedy under the Agreement.

On June 25, 2004, Riser demoted Craig from

his position as Manager-in-Charge and terminated his employment on July 1, 2004.

In response to his discharge, Craig filed a grievance with Riser on July 12, 2004, contesting his discharge and alleging various other violations of the Agreement by Riser. The grievance proceeding ultimately culminated in arbitration to decide whether Craig had impermissibly walked out of a meeting with Riser management and, thus, whether Riser validly discharged Craig for insubordination under the terms of the Agreement. An arbitrator rendered a decision on June 22, 2005, disposing of Craig's grievance under the Agreement.

IV. Craig files suit against Respondents for the commission of several state-law torts.

On July 20, 2004, Craig commenced a civil action against Respondents including *John Doe*, a fictitiously named defendant whose true name and address were unknown at the time of filing, in the Court of Common Pleas, Cuyahoga County, Ohio, for the commission of several state-law torts including libel, slander, tortious interference with an employment/contractual relationship, and civil conspiracy. (First Amended Complaint ¶¶17-80). On August 5, 2004, Craig filed a First Amended Complaint (hereinafter "FAC") with the Court of Common Pleas, correcting the names and addresses of two (2) of the Respondents.

In setting forth the state-law tort claims in his FAC, Craig specifically stated that he did *not* make the claims pursuant to a collective-bargaining

agreement (hereinafter "CBA") nor did any of the claims arise out of any rights contained therein. (FAC ¶9). In addition, the FAC contained no claims premised on federal law.

V. Respondents refuse to respond to Craig's discovery requests and remove the case to federal district court.

On August 26, 2004, Respondents, by and through counsel, removed the action to the United States District Court for the Northern District of Ohio and refused to respond to the discovery requests. (District Court Docket Item 28, Exhibit 'C'). Respondents based removal on their assertion that Craig's claims required interpretation of a CBA and, therefore, section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, preempted the claims from adjudication in state court. (*Notice of Removal* ¶¶20, 22, 25-26, 28 (District Court Docket Item 1)).

VI. Craig files motion to remand for lack of subject matter jurisdiction and the District Court denies the same.

On September 14, 2004, Craig served and filed with the District Court a *Motion in Opposition to Removal and Motion to Remand for Lack of Subject Matter Jurisdiction* (hereinafter "*Motion to Remand*"), along with a memorandum in support. (District Court Docket Item 7). The District Count entered an order denying Craig's *Motion to Remand*

on May 23, 2005.

VII. Craig repeatedly requests permission to conduct discovery and the District Court fails to answer the requests.

In the months following Craig's filing of his *Motion to Remand* and prior to the District Court reaching a decision on the same, Craig filed both a *Motion to Proceed with Discovery* and an *Amended Request for Ruling on Motion to Remand.* (District Court Docket Items 13 & 18). The District Court failed to respond to either filing until it declared them as "moot" in its decision on the *Motion to Remand.* (Order Denying Remand at 7, District Court Docket Item 20).

On July 19, 2005, Respondents filed a *Motion for a Protective Order to Stay Discovery* (hereinafter "*Motion to Stay Discovery*") and a *Motion for Summary Judgment* (hereinafter "*MSJ*"), (District Court Docket Items 25 & 27), and refused to respond to any of Craig's discovery requests until the District Court ruled on the *Motion to Stay Discovery.*[1] Craig opposed both motions. The District Court declined to rule on the *Motion to Stay Discovery* until it rendered its decision on Respondents' *MSJ*, at which

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[1] This Court should note that at no previous time had Craig been able to obtain discovery from Respondents due to Respondents' refusal to produce documents requested prior to removal and due to the District Court's subsequent continuance of the federal Case Management Conference until it ruled on the *Motion to Remand.*

time it merely held the *Motion to Stay Discovery* to be "moot". (Order Granting Summary Judgment at 7, District Court Docket Items 50-51).

VIII. The District Court awards summary judgment to Respondents.

On March 30, 2006, the District Court granted summary judgment in favor of all Respondents. (District Court Docket Items 50-51).

IX. Craig appeals the denial of his remand motion and entry of summary judgment in favor of Respondents and the Sixth Circuit denies the Parties' request for oral argument and affirms the District Court's decisions below.

On May 1, 2006, Craig filed his *Notice of Appeal* from the final judgment of the District Court with the United States Court of Appeals for the Sixth Circuit. The Parties fully briefed the matter and all Parties requested oral argument in accordance with Sixth Circuit Rule 34(a). Following the Sixth Circuit's granting of Respondents' motion for leave to file an appendix on August 23, 2006, the Parties received no further communication from the Sixth Circuit until June 4, 2007. At no time prior to June 4, 2007, did the Sixth Circuit indicate to the Parties that it would refuse their request for oral argument.

On June 4, 2007, the Sixth Circuit issued an order reciting much of the District Court's memoranda below and affirming the District Court's

decisions holding the LMRA to preempt Craig's claims against Respondents and awarding summary judgment to all Respondents. As did the District Court, the Sixth Circuit completely failed to respond to or even acknowledge any of the arguments Craig made in his briefs or acknowledge this Court's controlling decisions, such as *Lingle, infra, Hawaiian Airlines, infra,* and *Texton, infra*, even though Craig cited and discussed each of these cases in his briefs.

On July 3, 2007, Craig filed a *Petition for Rehearing* with the Sixth Circuit, alerting the court to a slew of clear factual and legal errors it made in its decision of June 4, 2007. The erroneous factual findings the Sixth Circuit made in reaching its decision, as noted in the *Petition for Rehearing*, include:

1. Its statement that Craig "originally filed this civil action in the Cuyahoga County Court of Common Pleas contesting the outcome of a dispute he had with his former employer, Riser Foods Company..." (Order at 1) even though Respondents' own admissions in their Brief (at 7), the arbitration decision Respondents previously submitted, and the docket of Matthew A. Craig v. John M. Brigadier, et al., Cuyahoga County Court of Common Pleas Case No. 04-536338, plainly show that Craig originally filed this civil action in the Cuyahoga County Court of Common Pleas long *before* he and Riser submitted a separate dispute concerning an alleged incident of insubordination to arbitration *and* even *before* Craig and Riser held the first

meeting with respect to this separate dispute.[2]

2. Its statement that Craig's termination resulted from a grievance process established by a CBA (Order at 4), even though the record contains no evidence that Craig's termination resulted from a grievance process established by a CBA, even though the arbitration decision submitted by Respondents plainly indicates that Craig did not initiate any grievance proceeding established by a CBA until *after* the termination of his employment, and even though the FAC clearly indicates that the conduct forming the basis for Craig's claims occurred *prior* to any demotion, *prior* to any discharge, and *prior* to Craig's commencement of any grievance proceeding.[3]

3. Its suggestion that Craig commenced the instant civil action to contest his termination of employment (Order at 1-2, 5-6) even though the insubordination matter Craig and Riser submitted to arbitration appears nowhere in Craig's FAC and even though Craig has *never* challenged or otherwise complained of the arbitrator's decision in this civil suit.

4. Its suggestion that the within action involves a

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[2] Thus, Craig could not have filed this civil action in the Cuyahoga County Court of Common Pleas to contest an "outcome" of a dispute with Riser because no "outcome" yet existed.

[3] Craig plainly states in his FAC that the claims first arose prior to June 25, 2004. (*See* FAC ¶¶21, 56, 60).

dispute solely between Craig and Riser even though the FAC evidences that Craig commenced the instant civil action against six (6) separate defendants, two (2) of which never had any direct connection to Riser whatsoever, and even though Craig charges only two (2) of the fourteen (14) counts set forth in the FAC against Riser.

On July 10, 2007, the Sixth Circuit denied the *Petition for Rehearing* without opinion. Craig now respectfully requests this Court to grant certiorari in the within matter to correct significant legal conflict between the Sixth Circuit's decision of June 4, 2007, and prior decisions of this Court and other circuits.

ARGUMENT

I. THE SIXTH CIRCUIT'S DECISION IN THE CASE *SUB JUDICE* VASTLY EXPANDS AND CONFLICTS WITH THE PRIOR DECISIONS OF BOTH THIS COURT AND DECISIONS OF OTHER CIRCUITS HOLDING THAT THE LMRA DOES NOT PREEMPT A CLAIM UNLESS THE CLAIM REQUIRES INTERPRETATION OF TERMS OF A CBA AND THIS COURT SHOULD, THEREFORE, GRANT CERTIORARI TO RESOLVE THE CONFLICT.

Section 301 of the LMRA provides that "[s]uits for violation of *contracts between an employer and a*

labor organization...may be brought in any district court of the United States having jurisdiction..." 29 U.S.C. § 185 (emphasis added). This Court has interpreted the language and purpose of the LMRA to preempt state court adjudication of claims requiring interpretation of CBAs so as to allow the federal courts to foster uniform meanings for disputed labor-contract terms and to prevent the chaos that would likely arise by allowing the individual states to fashion their own meanings for such terms. *Allis-Chambers Corp. v. Lueck*, 471 U.S. 202, 208-12 (1985).

To effectuate the purpose of the LMRA, this Court has repeatedly held that the LMRA preempts state-law claims brought in state court by a party to a CBA from adjudication in state court *only* if the claims require interpretation of CBA terms. *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 413 (1988). Where adjudication of a state-law claim does not absolutely require interpretation of the meaning of a CBA term, the claim is "independent" of the CBA and is not subject to LMRA preemption. *Id.* at 409-10. Mere consultation of a CBA's terms is not sufficient to cause LMRA preemption. *Id.* at 413 n.12. Even in instances where state law creates a cause of action that is virtually identical to the nature of a claim available under a CBA, the LMRA does not preempt the state-law claim from adjudication in state court so long as there exists a possibility to reach a judgment on the claim without interpreting the meaning of any term of a CBA. *Id.* at 409-13; *Caterpillar, Inc. v. Williams*, 482 U.S. 386,

394-95 (1987). Where a plaintiff may prove claims through factual circumstances and evidence of tortious motive, rather than citation to CBA language, the claims are beyond the preemptive reach of the LMRA. *Hawaiian Airlines v. Norris*, 512 U.S. 246, 261-62, 266 (1994); *Lingle*, 486 U.S. at 407-13.

In the context of addressing LMRA preemption, this Court has previously said that, in order for subject matter jurisdiction based on a question of federal law (e.g., interpretation of CBA terms) to exist, the plaintiff must plainly disclose the federal question on the face of the complaint. *Caterpillar,* 482 U.S. at 392. This is the "well-pleaded complaint rule". *Id.* A plaintiff is the "master" of the claims he brings against any defendant and he, alone, has the power to determine the theories under which he will sue and under what law he will bring his claims. *Lingle*, 486 U.S. at 410 n.10; *Caterpillar*, 382 U.S. at 395-99.

A limited exception to the well-pleaded complaint rule is the "complete preemption doctrine". *Caterpillar*, 382 U.S. at 393-94. The complete preemption doctrine serves to prevent a plaintiff from asserting a state law claim to enforce a CBA. *Id.* at 393-94. This Court has said that the complete preemption corollary to the well-pleaded complaint rule only applies when a complaint asserts rights created by a CBA or asserts claims substantially dependent on CBA terms. *Id.* at 394-95. This Court has further said that, despite the complete preemption doctrine, "a federal question

must [still] appear on the face of the complaint" in order for a defendant to remove the matter to federal court. *Id. at* 398-99. "[I]t is the legal character of a claim [rather than the facts underlying the claim]...that decides whether a state cause of action may go forward". *Livadas v. Bradshaw*, 512 U.S. 107, 123-24 (1994). This Court has said that the law fully entitles a plaintiff to assert only claims based on state law and, when he chooses to do so, the courts must respect this decision. *Hawaiian Airlines*, 512 U.S. at 260-66. If a plaintiff does not plead allegations sufficient to give rise to federal subject matter jurisdiction on the face of the complaint, a defendant cannot cause federal subject matter jurisdiction to exist, and thereby choose the forum for the action, by simply re-characterizing the claims the plaintiff has pled or by raising defenses created from federal law or found in a CBA. *Caterpillar*, 382 U.S. at 398-99.

In arriving at its decision in the case *sub judice*, the Sixth Circuit acknowledges that "Craig's complaint relies exclusively upon Ohio law". (Order at 3). The court then suggests that Craig's exclusive reliance on Ohio law is not determinative of federal subject matter jurisdiction in light of the "complete preemption doctrine". (*Id.*). In applying the doctrine and LMRA preemption, the Sixth Circuit concludes, without explanation, that resolution of Craig's claims "'will require a court to address relationships that have been created through the collective bargaining process and to mediate a dispute founded upon right [sic] created by a CBA'". (*Id.* at 4)

(quoting *DeCoe v. Gen. Motors Corp.*, 32 F.3d 212, 218 (6th Cir. 1994)). In so doing, the Sixth Circuit's decision is not only logically and legally inconsistent,[4] but conflicts with this Court's decisions with respect to LMRA preemption in at least three (3) significant ways.

First, the Sixth Circuit's decision sanctions, under the guise of the complete preemption doctrine, construing a complaint based exclusively upon state law as a complaint based on rights created by a CBA without identifying any particular terms of a CBA that require interpretation. As this Court has explained, the entire purpose for LMRA preemption is to allow the federal courts to foster uniform meanings for disputed labor-contract terms. *Allis Chambers*, 471 U.S. at 208-12. Holding a claim as preempted by the LMRA without identifying those CBA terms that a state court would necessarily need to interpret to resolve the claim fails to advance the purpose of LMRA preemption and needlessly interferes with states' interests in governing the relationships among those within their boundaries. Here, the courts below have utterly failed to cite to any provisions of a CBA that govern Craig's claims whatsoever.

Second, the Sixth Circuit's decision indicates that a court's finding that it will need to "address the relationships that have been created through the

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[4] The Sixth Circuit's decision is logically and legally inconsistent in that, if Craig bases his claims "exclusively" upon Ohio law, he does not base his claims upon rights created by a CBA.

collective bargaining process" in order to resolve a claim is a sufficient substitution for this Court's requirement that a claim require interpretation of CBA terms in order for a court to impose LMRA preemption. Thus, in the Sixth Circuit's view, the mere existence of a collective bargaining relationship between parties is sufficient to entangle any claims between the parties in the quagmire of LMRA preemption. Again, this Court has said that the LMRA does not preempt claims that do not actually require interpretation of CBA terms. *Hawaiian Airlines*, 512 U.S. at 262-63; *Livadas*, 512 U.S. at 123-24; *Lingle*, 486 U.S. at 407-13. Mere consultation of CBA terms is not enough, and LMRA preemption does not arise merely because the plaintiff employee is a party to a CBA with the defendant employer. *Lingle*, 486 U.S. at 413 n.12; *Caterpillar*, 482 U.S. at 397 n.10.

Third, the Sixth Circuit's decision holds that the LMRA preempts Craig's claims even though his libel, slander, tortious interference, and civil conspiracy claims fail to indicate, on their face, that they rely on the terms of a CBA for their resolution and even though they do not *require* interpretation of a CBA for their resolution. This Court should first observe that Craig expressly states in his FAC that he premises none of the claims contained therein upon rights of a CBA. In fact, the only instances in which Craig even mentions a CBA in the FAC is in paragraph nine, where he expressly states that "*none of the causes of action being alleged hereunder are covered by or subject to the collective bargaining*

agreement," and in paragraph sixteen, where he acknowledges for factual background purposes, his involvement in an alternative dispute resolution process concerning certain contractual violations that he expressly excludes from this suit (emphasis added). Craig makes no other reference to a CBA at any other place in the FAC, which contains fourteen separate counts/claims against six individual defendants.[5]

Aside from Craig's express denial in his FAC that he premises any of his claims on a CBA and the FAC's plain lack of reference to CBA provisions, the FAC plainly sets forth defamation, tortious interference, and civil conspiracy tort claims based entirely on state law. *Linn v. United Plant Guard Workers of America*, 383 U.S. 53, 61-67 (1977) (the right to be free of defamation is a right created by state law, not a CBA); *Dryden v. Cincinnati Bell Tel. Co.*, 135 Ohio App.3d 394, 400-03, 734 N.E.2d 409 (1st Dist. 1999) (the rights to be free of defamation and tortious interference with employment are rights created by state law, not a CBA). *Laurel Valley Oil Co. v. 76 Lubricants Co.*, 154 Ohio App.3d 512 (5th Dist. 2003) (civil conspiracy as cognizable under state tort law).

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[5] Craig asserts only two (2) of the fourteen (14) counts/claims against Riser and he expressly premises liability on these claims on ratification of intentional torts by Riser's employees. (FAC ¶¶52, 76). Craig never mentions discharge of employment in these counts/claims. (*See Id.*).

To establish a claim for libel (or slander) under state tort law, a plaintiff must show the existence of: (1) a false and defamatory statement; (2) in written (or oral) form; (3) that is published without privilege to a third person; (4) fault of the publisher for making the publication and; (5) in some instances, damages sustained therefrom. *Lawson v. AK Steel Corp.*, 121 Ohio App.3d 251, 256, 699 N.E.2d 951 (12th Dist. 1997); *Franks v. The Lima News*, 109 Ohio App.3d 408, 412, 672 N.E.2d 245 (3d Dist. 1996).

To establish a claim for tortious interference with an employment/contractual relationship under state tort law, a plaintiff must show the following: (1) the existence of an employment relationship or contract; (2) the wrongdoer's awareness of the existence of the relationship/contract; (3) the wrongdoer's intentional interference with the relationship/contract so as to induce or otherwise cause a discontinuance thereof;[6] (4) lack of

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[6] Ohio courts have interpreted this element as requiring a showing of the "action taken" or "intent" by the wrongdoer to procure non-performance of a contract or discontinuance of the relationship by a third person rather than a showing of actual breach. *See, e.g., Brookeside Ambulance, Inc. v. Walker Ambulance Serv.*, 112 Ohio App.3d 150, 155-57, 678 N.E.2d 248 (6th Dist. 1996); *Dryden*, 135 Ohio App.3d at 400; *Doyle v. Fairfield Mach. Co., Inc.*, 120 Ohio App.3d 192, 215-17, 697 N.E.2d 667 (11th Dist. 1997). Moreover, a plaintiff may prove tortious interference with an *employment* relationship even where no contract exists. *See Doyle*, 120 Ohio App.3d at 215-17. Craig has clearly alleged tortious interference with the employment relationship between himself and

justification for the interference and; (5) resulting damages. *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 176, 707 N.E.2d 853 (1999).

To state a claim for civil conspiracy under state tort law, a plaintiff must show the existence of: (1) a malicious combination; (2) of two or more persons; (3) to injure another in person or property; (4) in a way not competent for one alone; (5) which results in actual damages. *Laurel Valley Oil*, 154 Ohio App.3d at 520.

None of the elements of these claims turns on the meaning of CBA terms. Rather, these elements are products of purely factual inquiries, such as the actions taken by Respondents, the motives underlying those actions, and the underlying factual circumstances.

Several courts of appeals confirm that the LMRA does not preempt defamation and tortious interference with employment claims. *See, e.g.*, *Lopez v. Fox Television Animation, Inc.*, 76 Fed. Appx. 769 (9th Cir. 2003) (court held that the LMRA did not preempt a terminated employee's defamation claim against his employer); *Dashields v. Robertson*, 2000 U.S. App. LEXIS 9533 (4th Cir. 2000) (court held that the LMRA did not preempt a unionized employee's defamation and tortious interference claims against several coworkers); *Meyer v. Schnucks Markets, Inc.*, 163 F.3d 1048 (8th Cir. 1998) (court held that the LMRA did not preempt a unionized employee's defamation and tortious

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Riser. (FAC ¶¶63-74).

interference claims against a coworker and employer); *Graham v. Contract Transp., Inc.*, 220 F.3d 910 (8th Cir. 2000) (defamation claims not preempted); *Gay v. Carlson*, 60 F.3d 83 (2d Cir. 1995) (court found that a terminated employee's defamation and civil conspiracy claims against several coworkers arose from state law rights and did not require interpretation of a CBA); *see also Dryden*, 135 Ohio App.3d at 399-403 (holding that the LMRA did not preempt a terminated employee's defamation or tortious interference claims against former coworkers). In holding the LMRA to preempt Craig's defamation and tortious interference claims, the Sixth Circuit enters into a direct conflict with decisions of its sister circuits in addition to conflict with this Court.

Despite the Sixth Circuit's suggestion otherwise, not only has an arbitrator never decided the above claims against Respondents herein, but empowered her to do so. There is no evidence of a CBA involved here that contains a procedure for remedying torts committed by members of UFCW against co-members of the same, nor is there evidence of a procedure for remedying Riser's ratification of intentional torts by its employees.[7] Moreover, even if a CBA provided for such procedures, a CBA may not be the "only source" of an employee's rights in the workplace. *Hawaiian Airlines*, 512 U.S. at 258-62. State law may place

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[7] Again, this Court should remain mindful that the LMRA applies only to CBA disputes between labor unions and employers. 29 U.S.C. § 185.

additional, separate rights and duties upon those involved in a collective-bargaining relationship and this Court has consistently rejected the notion that an individual may not vindicate these separate and independent rights in state court where he has an alternative remedy available under a CBA. *See, e.g., Hawaiian Airlines*, 512 U.S. at 257-66; *Lingle*, 486 U.S. at 407-13.

In *Hawaiian Airlines*, for example, Hawaii law placed an additional and separate duty on the defendant employer to not discharge its employees in violation of public policy. 512 U.S. at 258-62. Likewise, Ohio places a separate body of rights and duties on those within its territorial limits that a CBA may not impede or diminish. Here, Craig had a state law right to be free from defamation, to not have his employment/contractual relationship tortiously interfered with by others, and a right to not be tortiously conspired against. Respondents herein had a corresponding duty under state law to not defame, to not tortiously interfere, to not ratify thetortious conduct of another, and to not engage in a civil conspiracy to tortiously injure another.

In rendering its decision below, the Sixth Circuit lost sight of the separate body of rights Ohio grants to those within its boundaries. The Sixth Circuithas lost sight of the independent nature of such rights for some time now with respect to defamation and tortious interference claims. For example, in *DeCoe, supra*, one of the most consistently cited cases in the Sixth Circuit with respect to LMRA preemption, the Sixth Circuit held

that the LMRA preempted an employee's defamation and tortious interference claims against his employer and several co-workers for allegedly falsely accusing him of committing sexual harassment upon several co-workers. *Id.* at 214-15. Even though the face of the plaintiff's complaint made no indication that the plaintiff based his claims on a CBA,[8] the *DeCoe* court delve into a CBA to locate terms that the defendant might have raised as a defense, or that might have required interpretation if the plaintiff had pled his claims differently, to determine if a court could resolve the claims without interpreting CBA terms. The impact of the *DeCoe* decision has been widespread, encouraging district courts to automatically hold defamation and tortious interference claims as preempted without regard to CBA terms or the independent nature of such claims.[9] For example, the district court below concluded: "in...[*DeCoe*]...the discharged...[plaintiff] raised claims such as defamation, [and] tortuous interference... The Sixth Circuit upheld the finding of preemption in...[that case]; the provisions of the LMRA must likewise govern the resolution of...[Craig's] claims". (Order Awarding Summary Judgment at 6, District Court Docket Items 50-51).

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[8] See Appendix at 13.

[9] The widespread impact is especially significant when considering that only the Ninth Circuit surpasses the Sixth Circuit in the number of cases involving the LMRA. Administrative Office of the United States Courts, *2006 Annual Report of the Director, Table B-7.*

The Sixth Circuit's decision in the case *sub judice* and *DeCoe* are neither anomalies within the Circuit nor anomalies among the several other circuits. *See, e.g., Campbell v. Kane, Kessler, P.C.*, 144 Fed. Appx. 127 (2d Cir. 2005); *Shiflett v. I.T.O. Corp. of Baltimore*, 202 F.3d 260 (4th Cir. 2000); *Papa v. Truland Systems Corp.*, 162 F.3d 1155 (4th Cir. 1998); *Kern v. Dannon Co., Inc.*, 71 Fed. Appx. 442 (5th Cir. 2003); *Collins v. Bradley*, 122 F.3d 1067 (5th Cir. 1997); *Potts v. Wilson*, 54 Fed. Appx. 190 (6th Cir. 2002); *Rafig v. A.H. Belo Corp.*, 203 F.3d 832 (9th Cir. 1999) (holding defamation claims preempted); *Turner v. American Fed. of Teachers Local 1565*, 138 F.3d 878 (11th Cir. 1998) (holding tortious interference claim as preempted); *but see* cases cited *supra*.

The much of the conflict between the decisions in the above cases arises from the construction of conclusions rather than application of facts to an exacting legal test. More than thirteen (13) years ago, in the last decision this Court rendered that discussed LMRA preemption in any significant detail, this Court acknowledged the lack of uniformity among the circuits in their application of the principles this Court set forth in *Lingle* and *Allis-Chambers*. *See Livadas*, 512 U.S. at 124 n. 18. There, this Court determined that the facts of that case did not render the matter a fit occasion to resolve the conflict among the circuits with respect to LMRA preemption because, there, non-preemption by the LMRA was "clear beyond peradventure". *Id.* Petitioner submits that the case

sub judice presents a fit occasion for this Court to resolve the continuing chaotic conflict between and within the circuits and to correct the numerous decisions conflicting with this Court through the adoption of a more definitive test for LMRA preemption.[10]

II. THE SIXTH CIRCUIT'S CONCLUSION THAT "EXAMINING THE EXISTENCE AND (POTENTIALLY) THE SEVERITY" OF THE HARM OF DISCHARGE WILL "REQUIRE THE COURT TO EVALUATE THE PARAMETERS FOR PROPER AND IMPROPER DISCHARGE" UNDER A CBA AND, THEREBY, GIVE RISE TO LMRA PREEMPTION DIRECTLY CONFLICTS WITH THIS COURT'S PRIOR DECISIONS AND THIS COURT SHOULD, THEREFORE, GRANT CERTIORARI TO RESOLVE THE CONFLICT.

In arriving at its decision in the case *sub judice*, the Sixth Circuit not only completely misstates the facts in asserting that all of Craig's tort claims allege harm of demotion and discharge (Order at 1), but then goes on to formulate a legal conclusion that directly conflicts with this Court's

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[10] The cases cited immediately above represent cases decided since this Court's decision in *Livadas*.

prior holdings under any set of facts.[11] According to the Sixth Circuit, as part of its justification in holding Craig's claims as preempted by the LMRA, "examining the existence and (potentially) the severity" of the harm of discharge will "require the court to evaluate the parameters for proper and improper discharge" under a CBA and, thereby, give rise to LMRA preemption. (Order at 4). However, this Court has repeatedly rejected the Sixth Circuit's conclusion that an allegation in a complaint of harm of termination of unionized employment requires an evaluation of the parameters for proper and improper discharge under a CBA. *See, e.g., Hawaiian Airlines*, 512 U.S. at 266 (the Court rejected the notion that examining the existence of discharge requires interpretation of a CBA and found that the existence of discharge was a "purely factual question," citing *Lingle*, 486 U.S. at 407).

This Court has likewise rejected the notion that determining the severity of harm caused by discharge from employment (i.e., value of lost wages caused by the event of discharge) requires interpretation of a CBA sufficient to cause preemption by the LMRA. *Livadas*, 512 U.S. at 124-25 ("when liability is governed by independent state law, the mere need to 'look to' the [CBA] for damages computation is no reason to hold the state-law claim

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[11] On review of the FAC, though, only the tortious interference and civil conspiracy claims (counts 10-14 of the FAC) allege harm of demotion and discharge. Contrary to the assertions of the lower courts, *none* of Craig's libel and slander claims alleges such harm.

defeated by [the LMRA]"); *Lingle*, 486 U.S. at 413 n.12 (although federal law would govern any interpretation of CBA terms when calculating the damages due on an employee's state-law claim, the underlying state-law claim would stand).

Although Craig's tortious interference with employment and civil conspiracy claims allege damages that include discharge from employment, Craig seeks monetary damages for these claims rather than remedies under a CBA, such as reinstatement of employment. Craig makes no statement in his FAC that Riser improperly terminated his employment under a CBA. Moreover, this Court's decisions in cases such as *Lingle*, *supra*, and *Hawaiian Airlines*, *supra*, involving employees who brought actions in state court against their former employers for wrongful discharge based on state law,[12] support the notion that federal labor law entitles a jury to find that improper/tortious motive under state law resulted in discharge irrespective of whether an employer was justified under a CBA in discharging an employee. These decisions further demonstrate the fallacy of the Sixth Circuit's assertion that Craig's allegation of harm from demotion and discharge causes the LMRA to preempt his claims and further demonstrate the need to correct the Sixth Circuit's decision in the

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[12] While *Hawaiian Airlines* involved the Railway Labor Act rather than the LMRA, the Court explicitly adopted the preemption standard for the LMRA set forth in *Lingle* for determining preemption under the Railway Labor Act. 512 U.S. at 261-66.

case *sub judice*.[13]

II. THE SIXTH CIRCUIT'S CONCLUSION THAT EVALUATION OF RESPONDENTS' IMPROPER MOTIVE OF ATTEMPTING TO "'OBTAIN A MORE LAX WORKING ENVIRONMENT FOR JOHN M. BRIGADIER' WILL REQUIRE THE COURT TO ASSESS THE PARAMETERS OF THE CURRENT WORKING ENVIRONMENT AND THE FUNCTIONING OF VARIOUS GRIEVANCE PROCEDURES" UNDER A CBA AND, THEREFORE, RESULT IN LMRA PREEMPTION OF ALL OF CRAIG'S CLAIMS DIRECTLY CONFLICTS WITH THIS COURT'S PRIOR DECISIONS AND THIS COURT SHOULD, THEREFORE, GRANT CERTIORARI TO RESOLVE THE CONFLICT.

In holding the LMRA to preempt Craig's claims, the Sixth Circuit enters into another direct conflict with this Court's prior decisions. Referring to Craig's statement in his FAC that John M. Brigadier's, Sue M. Brigadier's, and David L.

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[13] If the Sixth Circuit's assertion were true, then the LMRA would have also preempted the claims involved in *Lingle* and *Hawaiian Airlines* because, as the claims in those cases were "wrongful discharge" claims, an allegation of harm from *discharge* would have been essential to the claims.

Brigadier's motive for tortiously interfering with the employment relationship between Craig and Riser was to "obtain a more lax working environment" for John M. Brigadier, the Sixth Circuit concludes that proof of this motive would "require the court to assess the parameters of the current working environment and the functioning of various grievance procedures" created by a CBA. (Order at 4). However, the Sixth Circuit's conclusion is erroneous because such an assessment of the actual conditions of the working environment and the functioning of grievance procedures for resolution of disputes between Riser and union members would be irrelevant to establishing the existence of the improper motive.[14] In fact, this Court has repeatedly said that showing the existence of an improper motive is a factual inquiry and does not require interpretation of a CBA. *Hawaiian Airlines*, 512 U.S. at 261-66; *Lingle*, 486 U.S. at 407-13.[15] Accordingly,

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[14] Again, just as the libel and slander claims fail to allege harm of discharge, the libel and slander claims in the FAC also fail to contain the "obtain a more lax working environment" statement.

[15] In both *Hawaiian Airlines* and *Lingle*, the plaintiffs alleged improper motive of the defendants in their complaints for wrongful discharge against the defendants. In Ohio, presumably like Hawaii and Illinois, a complaint for wrongful discharge in violation of public policy must contain an allegation of improper motive. *See, e.g., Lewis v. Fairview Hosp.*, 156 Ohio App.3d 387, 391-92, 806 N.E.2d 185 (8th Dist. 2004) (indicating that a plaintiff must demonstrate improper motive for a wrongful discharge claim under state tort law); see also *Fred Siegel*, 85 Ohio St.3d at 171-79 (indicating that a plaintiff must demonstrate the

this Court should grant certiorari to resolve this clear conflict.

IV. THE SIXTH CIRCUIT'S DECISION HOLDING THAT THE LMRA PREEMPTED CRAIG'S CLAIMS AGAINST PERSONS WHO HAD NO RELATIONSHIP WITH UCFW NOR RISER WHATSOEVER IS PATENTLY CONTRARY TO THE LANGUAGE OF THE LMRA, INTERPRETATION OF THE LMRA BY THIS COURT AND OTHER CIRCUITS, AND FUNDAMENTAL CONCEPTS OF CONTRACT LAW, AND THIS COURT SHOULD, ACCORDINGLY, GRANT CERTIORARI TO CORRECT THE SAME.

The notion that the LMRA cannot preempt a claim against a defendant where the defendant is not a party to a CBA should not come as a difficult concept. After all, the LMRA applies only to "[s]uits for violation of *contracts between an employer and a labor organization*," and one cannot breach an agreement that does not bind him/her. 29 U.S.C. § 185 (emphasis added); *Int'l Union, United Mine Workers of America v. Covenant Coal Corp.*, 977 F.2d 895, 897-98 (4th Cir. 1992). Accordingly, logic dictates and several circuit courts have held that

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existence of an unjustifiable motive for tortious interference with a contractual relationship claim under state tort law).

federal courts do not have jurisdiction under the LMRA to entertain claims against persons who are not parties to a CBA. *Covenant Coal Corp.*, 977 F.2d at 897.

Here, Craig set forth several state law tort claims against Sue M. Brigadier and David L. Brigadier separately from claims against any of the other Respondents in this action.[16] Respondents do not dispute that neither Sue M. Brigadier nor David L. Brigadier had any form of employment, business, or contractual relationship with Riser.[17] Consequently, the Sixth Circuit could not have legally nor logically construed the LMRA to preempt the claims asserted against Sue M. Brigadier and David L. Brigadier in the FAC. In construing the LMRA to preempt Craig's claims against Sue M. Brigadier and David L. Brigadier, the Sixth Circuit has entered into direct conflict with doctrine of this Court and decisions of other circuits that necessarily requires resolution by this Court.

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[16] See Counts 2, 3, and 11 of the FAC.

[17] *See Defendants' Amended Answer to Plaintiff's First Amended Complaint* at ¶68 (admitting that neither Sue M. Brigadier nor David L. Brigadier had any form of employment, business, or contractual relationship with Riser).

V. THE STANDING POLICY OF THE SIXTH CIRCUIT AND SEVERAL OTHER CIRCUITS OF DENYING ORAL ARGUMENT TO PRO SE LITIGANTS RUNS AFOUL OF 28 U.S.C. § 1654, FED. R. APP. P. 34(a), PRIOR DECISION OF THIS AND OTHER COURTS, THE NOTION OF EQUALITY UNDER THE LAW, EQUAL ACCESS TO THE COURTS, AND CONFLICTS WITH OTHER CIRCUITS' IMPLEMENTATION OF FED. R. APP. P. 34(a) SUCH THAT THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE SAME.

Of separate, but no less significant, concern in the case *sub judice* is the Sixth Circuit's denial of the Parties' request for oral argument. At issue here are 28 U.S.C. § 1654, Fed. R. App. P. 34(a)(2), and the Sixth Circuit's consistent practice of prohibiting oral argument in cases involving pro se litigants.

Deeply rooted in the history of this republic and expressed in 28 U.S.C. § 1654 is the notion that a litigant may personally conduct his own case in court. *Faretta v. California*, 422 U.S. 806, 830 n.39 (1975); *O'Reilly v. New York Times Co.*, 692 F.2d 863, 867 (2d Cir. 1982). 28 U.S.C. § 1654, entitled "Appearance personally or by counsel," provides: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." The Federal Rules of Appellate Procedure further

acknowledge self-representation in the United States Courts of Appeals. *See, e.g.*, Fed. R. App. P. 3(c)(2) and (d)(1).

Found within the right of self-representation is the general right of litigants to orally present their own cases to courts on appeal. *Tindall v. Poultney High Sch. Dist.*, 414 F.3d 281, 286 (2d Cir. 2005). Fed. R. App. P. 34(a)(2) supports this general right and provides:

> **Standards.** Oral argument *must be allowed in every case* unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:
>
> (A) the appeal is frivolous;
>
> (B) the dispositive issue or issues have been authoritatively decided; or
>
> (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

Fed. R. App. P. 34(b) further provides: "**Notice of Argument; Postponement.** The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. [...]" (emphasis added).

As noted in the facts above, all Parties in the case *sub judice* properly requested oral argument

pursuant to Sixth Circuit Rule 34(a). However, as also indicated above, the clerk of the Sixth Circuit failed to advise the Parties "whether oral argument [would] be scheduled" as required by Fed. R. App. P. 34(b). Craig did not learn that the Sixth Circuit would not permit him oral argument until the court stated the same in its decision affirming the decision of the District Court.

As Craig noted in his request for oral argument, made pursuant to Sixth Circuit Rule 34(a), "the existence of federal subject matter jurisdiction in the wake of an allegation of LMRA preemption is an exceedingly complex area of the law," especially deserving of oral advocacy. (Brief of Plaintiff-Appellant, Appendix 'A') (citing *Farmer v. United Brotherhood of Carpenters & Joiners of America, Local 25*, 430 U.S. 290, 295-96 (1977); *Lydon v. Boston Sand & Gravel Co.*, 175 F.3d 6, 10 (1st Cir. 1999); *Foy v. Pratt & Whitney Group*, 127 F.3d 229, 233 (2d Cir. 1997); *Wilds v. UPS, Inc.*, 262 F. Supp. 2d 163, 184-85 (S.D.N.Y. 2003)). At least one court of appeals has described the LMRA preemption inquiry as "one of the most confused areas of federal court litigation". *See Galvez v. Kuhn*, 933 F.3d 773, 776 (9th Cir. 1991) (citing Note, *The Need for a New Approach to Federal Preemption of Union Members' State Law Claims*, 99 Yale L.J. 209, 209 (1989)). Craig requested oral argument in particular to "elaborate on the summary of his position...clarify whatever questions [the Sixth Circuit] may have with respect to his contentions...[and] clear up any lingering

misconceptions with respect to [his] claims...". (Brief of Plaintiff-Appellant, Appendix 'A'). On review of th practices of the Sixth Circuit, though, it is all but certain that the Sixth Circuit would not have permitted Craig to orally argue his case under any set of circumstances.

Although Fed. R. App. P. 34(a) makes no distinction between represented litigants and those appearing pro se, and even though Congress has evidenced its intent to eliminate any such distinction through enactment of 28 U.S.C. § 1654, the Sixth Circuit has consistently differentiated between cases involving pro se litigants and those where no party is pro se. The Administrative Office of the United States Courts reports that seven hundred fifty-one (751) private party civil cases terminated on the merits in the Sixth Circuit Court of Appeals between April 1, 2005, and March 31, 2006.[18] The vast majority of these cases, four hundred ninety-six (496), terminated following oral argument and two hundred fifty-five (255) of the cases terminated following submission on the briefs.[19] Upon investigation, Craig has discovered that, of the (751) private party civil cases terminating on the merits,

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[18] Administrative Office of the United States Courts, *2006 Federal Judicial Caseload Statistics, Table B-1.* Craig used this time period for demonstrative purposes and has no reason to believe that the Sixth Circuit has been more receptive to oral argument in cases involving pro se litigants during any other time period.

[19] *Id.*

only eighty-five (85) of the cases terminated following the Sixth Circuit's denial of oral argument pursuant to Sixth Circuit Rule 34(j).[20] Of the eighty-five (85) cases in which the Sixth Circuit refused to hear oral argument, eighty-three (83) of the cases involved pro se litigants.[21] In fact, Craig has uncovered only a single instance in the referenced year where the Sixth Circuit heard oral argument in a case involving a pro se litigant.[22] Craig has uncovered no cases in which the Sixth Circuit denied oral argument where all parties indicated a desire for oral argument and where all parties had obtained counsel.

In many of the cases where the Sixth Circuit

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[20] See Appendix at 31. Sixth Circuit Rule 34(j) is similar to Fed. R. App. P. 34(a) except that it liberalizes the court's ability to deny oral argument in cases beyond that permitted by Fed. R. App. P. 34(a). Whereas Fed. R. App. P. 34(a) states that oral argument "*must* be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary" for one of three (3) specified reasons, Sixth Circuit Rule 34(j)(1) permits the aforesaid panel to deny oral argument *without* the requirement of finding one of the three (3) specified reasons and Sixth Circuit Rule 34(j)(2) merely states that oral argument will "ordinarily" be allowed unless someone (the rule does not specify who) finds that one of the three (3) specified reasons applies. (emphasis added).

[21] *Id.* In the two cases not involving pro se litigants, one or both of the parties expressed a desire that the court not hold oral argument. See Sixth Circuit docket numbers 04-3304 and 04-6120.

[22] See Sixth Circuit docket number 05-1155.

denied oral argument to pro se litigants, the Sixth Circuit based its denial on Sixth Circuit Rule 34(j)(2)(C), which states that "[t]he facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument".[23] Sixth Circuit Rule 34(h)(1) states that oral argument "should undertake to emphasize and clarify the written argument appearing in the briefs". Pro se litigants are precisely those persons who are most *unlikely* to adequately present the facts and legal arguments in their briefs and are the persons most likely to benefit from an opportunity to emphasize and clarify the written arguments appearing in their briefs. Thus, true application of the standards set forth by Fed. R. App. P. 34(a) and Sixth Circuit Rule 34(j)(2)(C) would reveal that the vast majority of private civil cases terminating after oral argument involved pro se litigants. However, the statistics reveal but a disingenuous application.

Aside from the raw numbers, Sixth Circuit Internal Operating Procedure Rule 34(c) evidences a general exclusion of pro se litigants from the oral argument process.[24] The Sixth Circuit is not alone

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[23] In the case *sub judice*, the Sixth Circuit denied oral argument pursuant to Sixth Circuit Rule 34(j)(1) and completely failed to indicate which of the three (3) permissible reasons set forth in Fed. R. App. P. 34(a) it relied upon in denying oral argument.

[24] Here, the Sixth Circuit refers exclusively to "counsel" instead of the term "party," as used throughout the Sixth Circuit's other rules.

in its refusal to afford the same consideration to pro se litigants as it does those with counsel. For example, Fourth Circuit Rule 46(f) states that "[c]ases involving pro se litigants are ordinarily not scheduled for oral argument" despite Fed. R. App. P. 34(a)'s requirement that all cases proceed to oral argument "unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary" for one of three (3) specified reasons. Rather than requiring "a panel of three judges who have examined the briefs and record" to unanimously agree that "oral argument is unnecessary," as set forth by Fed. R. App. P. 34(a), Eight Circuit Rule 34(A) permits a clerk or senior staff attorney to screen out cases for disposition without oral argument. In contrast, the Second Circuit has expressly embraced oral argument by pro se litigants. *See Tindall*, 414 F.3d at 286; Second Circuit Rule 34 (expressly providing each pro se litigant an opportunity to elect to orally argue the case and granting all parties an opportunity to request reconsideration of a panel's unanimous sua sponte decision not to hear oral argument in accordance with Fed. R. App. P. 34(a)).[25]

The hard numbers and facts are impossible to ignore and readily evidence disparate treatment toward those who cannot afford counsel or who choose to not hire counsel when attempting to

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[25] Second Circuit Rule 34 has some room for correction, though, because it still affords lesser deference to cases involving pro se litigants by lessening the time for oral argument in those cases.

resolve disputes through the judicial system. The very same panel deciding the case below has described oral argument as a "benefit".[26] Had the Sixth Circuit afforded Craig the same benefit that it would have afforded him had his name not carried the pro se label, the court may have been less inclined to "rubber stamp" the District Court's decision below and all of the factual and legal errors contained therein.

Craig submits that the practice of the Sixth Circuit and other circuits of allowing oral argument "only for attorneys," as Craig recalls the case manager saying when discussing oral argument not long after filing his *Notice of Appeal* below, is unjust, defies the express policy set forth by Congress, defies the policy set forth in the Federal Rules of Appellate Procedure, and conflicts with the policies of other circuits in implementing the aforesaid Federal Rules. Accordingly, Craig respectfully requests that this Court grant certiorari so that the process of washing away this scarlet letter wrongfully imposed upon litigants without an attorney may begin.

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[26] See Zbuka v. Marathon Ashland Petroleum, LLC, No. 06-4314, p. 2 (6th Cir. June 25, 2007).

Respectfully submitted,

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APPENDIX

Case No: 06-3607

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

MATTHEW A. CRAIG

Plaintiff - Appellant

FILED
JUL 10 2007
LEONARD GREEN, Clerk

v.

JOHN BRIGADIER; SUE M. BRIGADIER; DAVID L. BRIGADIER; JACQUELYN F. LENSON; RISER FOODS COMPANY, d/b/a Giant Eagle, Inc.

Defendants – Appellees

BEFORE: GILMAN, GIBBONS and GRIFFIN, Circuit Judges.

Upon consideration of appellant's motion to file instanter the petition for panel rehearing,

It is ORDERED that the motion be and hereby is GRANTED.

And after further consideration of the petition for rehearing filed by appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED.**

ENTERED BY ORDER OF THE COURT

/s

Leonard Green, Clerk

NOT RECOMMENDED
FOR FULL-TEXT PUBLICATION

No. 06-3607

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
JUN 04 2007
LEONARD GREEN, Clerk

MATTHEW A. CRAIG, Plaintiff-Appellant,	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO
v.	)	
	)	

ORDER

Before: GILMAN, GIBBONS, and GRIFFIN, Circuit Judges.

Matthew A. Craig appeals pro se a district court judgment that dismissed his civil action, which was removed from an Ohio state court pursuant to 28 U.S.C. §1441. This case has been referred to a panel of the court pursuant to Rule 34G)(l), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not

needed. Fed. R. App. P. 34(a).

Craig originally filed this civil action in the Cuyahoga County Court of Common Pleas contesting the outcome of a dispute he had with his former employer, Riser Foods Company, d/b/a Giant Eagle, Inc. (Giant Eagle). Essentially, Craig asserted claims of defamation, slander, libel, conspiracy, and tortious interference with contract - torts which allegedly caused him harm in that they resulted in his demotion and termination as a Giant Eagle employee. The defendants alleged federal jurisdiction over Craig's claims under the Labor Management Relations Act (LMRA), 29 U.S.C. § 158(a), and removed the case to the United States District Court for the Northern District of Ohio. Craig's subsequent motion to remand the case to the state court was denied after the district court found that Craig's claims were properly read as claims for improper discipline and

discharge under the collective bargaining agreement (CBA), and thus pre-empted under § 301 of the LMRA.

Thereafter, Giant Eagle filed a motion for summary judgment which the district court granted. In so ruling, the district court found that Craig's claims were preempted by § 301 of the LMRA, and that the arbitrator's finding that Giant Eagle properly terminated Craig for insubordination under

the terms ofthe CBA precluded judicial review. This appeal followed.

Craig reasserts his argument that remand is proper. Giant Eagle's removal was predicated upon federal question jurisdiction in that Craig's claims purportedly arose under § 301 of the LMRA, rather than Ohio law. In reviewing the district court's denial of Craig's motion to remand, this court looks to the complaint at the time of removal, reviews the denial of the motion to remand de novo, and determines whether the action was properly removed in the first place. *See Ahearn* v. *Charter Twp. of Bloomfield,* 100 F.3d 451,453 (6th Cir. 1996). "Removing defendants bear the burden of establishing federal subject-matter jurisdiction." *Id.* at 453-54.

"Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." *Caterpillar, Inc.* v. *Williams,* 482 U.S. 386, 392 (1987). To be removable based upon federal question jurisdiction, generally the complaint must affirmatively allege a federal claim. *See Beneficial Nat'l Bank* v. *Anderson,* 539 U.S. 1,6 (2003). Federal courts examine the well-pleaded allegations of the complaint for a federal question on its face, and ignore potential defenses, *id.,* "including the defense of pre-emption, even if the defense is anticipated in the plaintiff s complaint, and even if both parties concede that the federal defense is the only question truly at issue." *Caterpillar, Inc.,* 482 U. S. at 393. Since a plaintiff is the master of his complaint, *see AmSouth Bank* v. *Dale,* 386 F.3d 763, 776 (6th Cir. 2004), where a

choice is made to assert only a state-law claim, the general rule prohibits recharacterizing it as a federal claim for removal purposes. *See Metro. Life Ins. Co.* v. *Taylor,* 481 U.S. 58, 63 (1987). Federal jurisdiction can therefore generally be avoided by relying exclusively on state law. *See Smolarek* v. *Chrysler Corp.,* 879 F.2d 1326, 1329 (6th Cir. 1989) (en banc).

The face of Craig's complaint relies exclusively upon Ohio law. However, one limited exception to the general rule is "when a federal statute wholly displaces the state-law cause of action through complete pre-emption." *Beneficial Nat'l Bank,* 539 U.S. at 8. This narrow exception to the well-pleaded complaint rule, known as the "complete preemption" doctrine, occurs where "Congress [has] so completely preempt[ed] a particular area that any civil complaint raising this select group of claims is necessarily federal in character." *Metro. Life, Ins. Co.* , 481 U.S. at 63-64. When Congress has indicated an intent to completely occupy the field, any seemingly state-law claim is in fact a federal claim for purposes of federal question jurisdiction. *Beneficial Nat'I Bank,* 539 U.S. at 9. "[A]ny claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law." *Caterpillar, Inc.,* 482 U.S. at 393; *see also Franchise Tax Bd. of Cal.* v. *Constr. Laborers Vacation Trust for S.Ca!.,* 463 U.S. 1,24 (1983)

(noting that "if a federal cause of action completely pre-empts a state cause of action[,] any complaint that comes within the scope of the federal cause of action necessarily 'arises under' federal law").

As the party invoking removal, Giant Eagle relies upon the LMRA. Section 301 of the LMRA is a statute under which the Supreme Court has recognized complete preemption. *See, e.g., Allis Chalmers Corp.* v. *Lueck,* 471 U.S. 202, 209-11 (1985) (citing *Local* 174, *Teamsters, Chauffeurs, Warehouseman & Helpers of Am.* v. *Lucas Flour Co.,* 369 U.S. 95, 103 (1962); *Avco Corp.* v. *Aero Lodge No.* 735, *Int'l Assoc. of Machinists & Aerospace Workers,* 390 U.S. 557, 55961 (1968) (citing *Textile Workers Union of Am.* v. *Lincoln Mills,* 353 U.S. 448,456-57 (1957)). This court has noted that § 301 has an unusually powerful preemptive force over a claim for relief sought exclusively under state law. *Alongi* v. *Ford Motor Co.,* 386 F.3d 716, 723-24 (citing *Beneficial Nat'l Bank,* 539 U:S. at 7).

Section 301 of the LMRA provides that "[s]uits for a violation of contracts between an employer and a labor organization representing employees ... may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185(a). The statute serves to

preempt state-law claims for what are in actuality suits for violation of contracts between an employer and a labor organization. *Caterpillar, Inc.*, 482 U.S. at 394.

To determine whether a state-law claim is sufficiently "independent" to survive § 301 preemption, this court has adopted a two-step inquiry. *DeCoe* v. *Gen. Motors Corp.*, 32 F.3d 212, 216-17 (6th Cir. 1994). First, courts must determine whether resolving the state-law claim would require interpretation of the terms of the CBA. If so, the claim is preempted. Second, courts must ascertain whether the rights claimed by the plaintiff were created by the CBA, or instead by state law. *Id.* at 216. If the rights were created by the CBA, the claim is preempted. In short, if a state law claim fails *either* of these two requirements, it is preempted by § 301.

Using the approach established in *DeCoe*, we conclude that preemption was warranted in this case and that removal was proper. First, the resolution of Craig's claims "will require a court to address relationships that have been created through the collective bargaining process and to mediate a dispute founded upon right created by a CBA." *Id.* at 218 (quoting *Jones* v. *Gen. Motors, Corp.*, 939 F.2d 380,382-83 (6th Cir. 1991). As stated by the district court,

> Craig complains of defamation, slander, and libel- torts which allegedly caused him harm in that they resulted in his demotion and termination. Examining the existence and (potentially) the

> severity of this harm will evidently require the court to evaluate the parameters for proper and improper discharge. Craig claims tortious interference with his employment and with his contractual relationship with Giant Eagle (as well as conspiracy to interfere). Evaluation of the defendants' alleged attempts to "obtain a more lax working environment" for John Brigadier will require the court to assess the parameters of the current working environment and the functioning of various Giant Eagle grievance procedures, again as created. by the CBA. As the second *DeCoe* criterion is satisfied, preemption is clearly warranted.

(May 23, 2005, Memorandum and Order at unnumbered page 5).

Second, Craig asserts various wrongs alleged to have caused his demotion and discharge. As pointed out by the district court, "[Craig's] termination resulted from a grievance process established by a CBA, signed only by the parties engaged in collective bargaining, and ended his tenure at a job whose terms and conditions were created by and subject to a CBA." (May 23, 2005, Memorandum and Order at unnumbered pages 5-6). Accordingly, removal was proper and remand was not warranted.

This court reviews de novo a district court's grant of summary judgment. *See Harrow Prods., Inc.* v. *Liberty Mut. Ins. Co.*, 64 F.3d 1015 (6th Cir. 1995). Summary judgment is proper if there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In this case, the parties do not allege there are any issues of material fact; therefore, the court must consider whether the defendant is entitled to judgment as a matter of law.

Upon review, we conclude that the district court properly upheld the arbitrator's decision. "[C]ourts must accord an arbitrator's decision substantial deference because it is the arbitrator's construction of the agreement, not the court's construction, to which the parties have agreed." *Solvay Pharms., Inc.* v. *Duramed Pharms., Inc.*, 442 F.3d 471,476 (6th Cir. 2006) (citation and internal quotation marks omitted); *see also Michigan Family Resources, Inc.* v. *Servo Employees Int'l Union, Local 517M*, 475 F.3d 746,755 (6th Cir. 2007) (en banc) (referring to "the exceedingly deferential task of considering whether to vacate an arbitration award"), *pet. cert. filed*, 75 U. S.L. W. 3598 (U.S. Apr. 26, 2007) (No. 06'-1435). "'[C]ourts must refrain from reversing an arbitrator simply because the court disagrees with the result or believes the arbitrator made a serious legal or factual error.'" *Solvay*, 442 F.3d at 476 (quoting *United Paperworkers Int'l Union* v. *Misco, Inc.*, 484 U.S. 29, 38 (1987)); *see also Michigan Family Resources*, 475 F.3d at 748 (en banc) ("[B]ecause the company has shown no more

than that the arbitrator made an error, perhaps even a 'serious error,' in interpreting the contract, we ... direct the district court to enter an order enforcing the award.") (citing *Misco,* 484 U.S. at 38-39).

If the arbitrator's award "draws its essence from the ... agreement," and is not merely the arbitrator's "own brand of industrial justice," the award is legitimate. *Solvay,* 442 F.3d at 476 (quoting *United Steelworkers of Am.* v. *Enter. Wheel & Car. Co.,* 363 U.S. 593, 597 (1960)). As this court recently explained, the Supreme Court's decisions in *Misco,* 484 U.S. 29 (1987) and *Major League Baseball Players Ass 'n* V. *Garvey,* 532 U.S. 504 (2001)

> define the line between a permissible award (that "draws its essence from the contract") and an impermissible award (that "simply reflects the arbitrator's own notion[] of industrial justice) based on whether the arbitrator "is even arguably construing or applying the contract and acting within the scope of his authority."

> *Misco,* 484 U.S. at 38 ... ; *see Garvey,* 532 U.S. at 509 .... * * * In both cases, the [Supreme] Court held that once it was established that the arbitrator was construing or applying the contract (and acting within the scope of his authority), it made no difference whether the

> arbitrator had committed "serious," "improvident," or even "silly" errors in resolving the merits of the dispute. *Misco,* 484 U.S. at 38-39 ... ; *Garvey,* 532 U.S. at 509-10 ....

Michigan Family Resources, 475 F.3d at 752-53 *(en banc).*

Craig does not challenge the validity of the arbitration process on appeal. Nevertheless, we have examined the arbitrator's decision and, in light of the deference we must give to such decisions, conclude that the decision is drawn from the essence of the CBA. The arbitrator was charged with deciding whether Giant Eagle had just cause to discharge Craig. To do so, she had to evaluate Craig's particular conduct and determine whether that conduct fell within the CBA's discharge provision. The arbitrator duly executed her authority under the CBA and did not dispense her own brand of industrial justice so as to overcome the deferential standard of review afforded arbitration awards. *Id.*

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s

Leonard Green, Clerk

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Matthew A. Craig 11325 Cheyenne Trail Suite 302 Parma Heights, OH 44130, Plaintiff v. John M. Brigadier 6002 Bradley Avenue Parma, OH 44129 Sue M. Brigadier 6002 Bradley Avenue Parma, OH 44129 David L. Brigadier 6002 Bradley Avenue Parma, OH 44129 1533 Spring Garden Avenue Lakewood, OH 44107 Riser Foods Company d/b/a Giant Eagle, Inc. 5300 Richmond Road	)	No.: CV04536338 JUDGE: Jose' A. Villanueva **FIRST AMENDED COMPLAINT WITH JURY DEMAND ENDORSED HEREON**

Bedford Heights, OH)
44146)
John Doe)
**Address To Be)
Provided By)
Amendment)
Once True Name Is)
Known**),)

Defendants.

STATEMENT OF JURISDICTION

1. Plaintiff Matthew A. Craig, at all times stated herein, has been and continues to be a resident of Cuyahoga County, Ohio.
2. Defendant John M. Brigadier, at all times stated herein, has been and continuesto be a resident of and employed in Cuyahoga County, Ohio.
3. Defendant Sue M. Brigadier, at all times stated herein, has been and continues to be a resident of Cuyahoga County, Ohio.
4. Defendant David L. Brigadier, at all times stated herein, has been and continues to be a resident of Cuyahoga County, Ohio.
5. Defendant Jacquelyn F. Lenson (hereinafter "Lenson"), at all times stated herein, has been and continues to be a resident of and employed in Cuyahoga County, Ohio.
6. Defendant Riser Foods Company, doing

business as Giant Eagle, Inc. (hereinafter "GE"), is a for-profit corporation registered to conduct business in the state of Ohio and operates multiple retail stores throughout Cuyahoga County, Ohio.

7. Defendant *John Doe*, at all times stated herein, has been and continues to be a resident of and employed in Cuyahoga County, Ohio.

8. The causes of action, damages sustained, and the events that occurred, originate in Cuyahoga County, Ohio. This is a civil action for damages in excess of $25,000.

9. None of the causes of action being alleged hereunder are covered by or subject to the collective bargaining agreement by and between Defendant GE and United Food & Commercial Workers Union Local No. 880, to which Plaintiff is a party.

FACTS COMMON TO ALL COUNTS

10. Plaintiff was hired by Defendant GE as a Part-Time Grocery Clerk for its retail store #0185, located at 6925 Southland Drive, Middleburg Heights, Ohio (hereinafter "0185"), and began work on July 27, 2003.

11. Plaintiff was regularly employed by Defendant GE at 0185 until his discharge on July 1, 2004.

12. Up until the time of his demotion on June 25, 2004, and subsequent discharge on July 1, 2004, Plaintiff had never been subjected to disciplinary action by Defendant GE.

13. During the term of his employ, Plaintiff received several awards and pay increases for service

to Defendant GE beyond that which was required.

14. During the latter part of March, 2004, Plaintiff was promoted to the "Manager in Charge" position and regularly served as closing manager for 0185 until his demotion on June 25, 2004.

15. Plaintiff received a pay increase soon after and corresponding to being promoted to the "Manager in Charge" position.

16. Plaintiff is currently appealing his discharge and other contractual violations which are subject to the collective bargaining agreement by and between Defendant GE and United Food & Commercial Workers Union Local No. 880 pursuant to an alternative dispute resolution process set forth in the agreement.

COUNT 1

(Slander - John Brigadier)

17. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 16 as if fully rewritten herein.

18. Sometime after Plaintiff was hired by Defendant GE, Defendant John Brigadier was hired by Defendant GE to work at 0185.

19. Upon Plaintiff's promotion to "Manager in Charge", Defendant John Brigadier began working under the direct supervision of Plaintiff on the days of the week when both Plaintiff and Defendant John Brigadier worked during the evening hours.

20. Plaintiff's authority over Defendant John Brigadier and the other employees of 0185 was limited to directing their work activities while

Plaintiff was actively serving as "Manager in Charge". The extent of Plaintiff's authority to discipline employees was to send them home for the remainder of their shift for insubordination. At no time was Plaintiff given the authority to discharge, change pay rates, or otherwise alter conditions of employment for any of the employees at 0185.

21. Sometime before June 25, 2004, without any provocation or notice to Plaintiff, Defendant John Brigadier falsely and maliciously alleged to others that Plaintiff had committed sexual harassment against him, imputing moral turpitude and the commission of a criminal offense in violation of federal and state laws, including 42 U.S.C.A. § 2000e-2(m) (West 2003) and section 4112.02 of the Ohio Revised Code Annotated (West 2004), by Plaintiff.

22. The false and unprovoked allegations made by Defendant John Brigadier, which were calculated to injure Plaintiff's contractual relationship with Defendant GE, have subjected Plaintiff to ridicule and have caused Plaintiff to suffer personal humiliation, mental anguish, and degradation of his reputation.

23. As a direct and proximate result of the slanderous accusations made against Plaintiff by Defendant John Brigadier, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 2

(Libel - Sue Brigadier and David Brigadier)

24. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 23 as if fully rewritten herein.

25. Among those to whom John Brigadier published his defamatory remarks were his parents, Defendants Sue Brigadier and David Brigadier.

26. Thereafter, without just cause or occasion, Defendants Sue Brigadier and David Brigadier jointly and severally perpetuated the slanderous sexual harassment allegations made against Plaintiff by Defendant John Brigadier by maliciously publicizing the false allegations to others in written form. Among those to whom Defendants Sue Brigadier and David Brigadier published said allegations were other employees of Defendant GE, whereby Defendants Sue Brigadier and David Brigadier also indicated their propensity to take legal action against Defendant GE based on the allegations.

27. At no previous time has Defendant Sue Brigadier discussed any matter with Plaintiff other than to notify Plaintiff on a few occasions via telephone that Defendant John Brigadier would not be reporting to work as scheduled.

28. At no previous time has Defendant David Brigadier communicated with Plaintiff in any form.

29. The false allegations made by Defendants Sue Brigadier and David Brigadier, which have been made in bad faith and which were calculated to injure Plaintiff's contractual relationship with

Defendant GE, have subjected Plaintiff to ridicule and have caused Plaintiff to suffer personal humiliation, mental anguish, and degradation of his reputation.

30. As a direct and proximate result of the libelous accusations jointly and severally made against Plaintiff by Defendants Sue Brigadier and David Brigadier, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 3

(Slander - Sue Brigadier and David Brigadier)

31. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 30 as if fully rewritten herein.

32. Without just cause or occasion, Defendants Sue Brigadier and David Brigadier jointly and severally perpetuated the false sexual harassment allegations made against Plaintiff by Defendant John Brigadier by maliciously continuing to publicize the false allegations to others through verbal communications.

33. The false allegations made by Defendants Sue Brigadier and David Brigadier, which have been made in bad faith and which were calculated to injure Plaintiff's contractual relationship with Defendant GE, have subjected Plaintiff to ridicule and have caused Plaintiff to sffer personal humiliation, mental anguish, and degradation of his reputation.

34. As a direct and proximate result of the

slanderous accusations made against Plaintiff by Defendants Sue Brigadier and David Brigadier, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 4

(Libel - Lenson)

35. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 34 as if fully rewritten herein.

36. Of those to whom the defamatory sexual harassment allegations made against Plaintiff by Defendants John Brigadier, Sue Brigadier, and David Brigadier were communicated, either directly or indirectly, is Defendant Lenson.

37. Defendant Lenson is employed by Defendant GE and at all times relevant herein has served as Human Resources Manager for 0185.

38. Upon learning of the unsubstantiated allegations made against Plaintiff by Defendants John Brigadier, Sue Brigadier, and David Brigadier, Defendant Lenson, while acting within the scope of her employment, perpetuated the defamatory allegations against Plaintiff by publicizing the false allegations to others in written form.

39. Defendant Lenson maliciously perpetuated the allegations made against Plaintiff by Defendants John Brigadier, Sue Brigadier, and David Brigadier, even though she knew or should have known that the sexual harassment allegations were without merit.

40. The false allegations made and perpetuated by

Defendant Lenson, which she has caused to be widely distributed and which were calculated by Defendant Lenson to injure Plaintiff's contractual relationship with Defendant GE, have subjected Plaintiff to ridicule and have caused Plaintiff to suffer personal humiliation, mental anguish, and degradation of his reputation.

41. As a direct and proximate result of the libelous accusations made against Plaintiff by Defendant Lenson, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 5

(Slander - Lenson)

42. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 41 as if fully rewritten herein.

43. Upon learning of the unsubstantiated allegations made against Plaintiff by Defendants John Brigadier, Sue Brigadier, and David Brigadier, Defendant Lenson, while acting within the scope of her employment, perpetuated the defamatory allegations against Plaintiff by publicizing the false allegations to others through verbal communications. Publication by Defendant Lenson included directly accusing Plaintiff of the crime of sexual harassment in the presence of others.

44. Defendant Lenson maliciously perpetuated the allegations made against Plaintiff by Defendants John Brigadier, Sue Brigadier, and David Brigadier, even though she knew or should have known that the

sexual harassment allegations were without merit.

45. The false allegations made and perpetuated by Defendant Lenson, which she has caused to be widely distributed and which were calculated by Defendant Lenson to injure Plaintiff's contractual relationship with Defendant GE, have subjected Plaintiff to ridicule and have caused Plaintiff to suffer personal humiliation, mental anguish, and degradation of his reputation.

46. As a direct and proximate result of the slanderous accusations made against Plaintiff by Defendant Lenson, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 6

(Slander - Lenson)

47. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 46 as if fully rewritten herein.

48. At or about the same time as making and perpetuating the allegations set forth in Counts 4 and 5, Defendant Lenson falsely and maliciously accused Plaintiff, in the presence of others, of having committed criminal voyeurism, an act imputing moral turpitude and the commission of a criminal offense in violation of section 2907.08 of the Ohio Revised Code Annotated (West 2003) by Plaintiff.

49. The allegations of criminal voyeurism made by Defendant Lenson, which were calculated to injure Plaintiff's contractual relationship with Defendant

GE, have since been widely publicized and have subjected Plaintiff to ridicule and have caused Plaintiff to suffer personal humiliation, mental anguish, and degradation of his reputation.

50. As a direct and proximate result of the slanderous accusations of criminal voyeurism made against Plaintiff by Defendant Lenson, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 7

(Defamation - GE)

51. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 50 as if fully rewritten herein.

52. The libelous and slanderous allegations made by Defendant Lenson, at all times herein stated, were condoned and ratified by Defendant GE both implicitly and expressly through the supportive actions taken by other managerial employees of Defendant GE.

53. The aforesaid allegations made by Defendant Lenson, who serves in a managerial capacity, were calculated to facilitate the business interests of her employer, Defendant GE, by reducing the risk of a lawsuit being brought against Defendant GE by Defendants Sue Brigadier and David Brigadier.

54. As a direct and proximate result of the false accusations of moral and criminal misconduct made and perpetuated by Defendant Lenson as set forth in Counts 4 through 6, for which Defendant GE has

directly benefited, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury for which Defendant GE is jointly and severally responsible therefore.

COUNT 8

(Libel - *John Doe*)

55. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 54 as if fully rewritten herein.

56. Sometime before June 25, 2004, without any provocation or notice to Plaintiff, Defendant *John Doe*, an employee of Defendant GE whose true name was not discoverable as of the time of pleading, falsely and maliciously alleged to others in writing that Plaintiff had ordered an employee under eighteen years of age to operate hazardous machinery in violation of federal and state laws including 29 C.F.R. § 570.63 (2004), section 4109.05 of the Ohio Revised Code Annotated (West 2004), and section 4101:9-2-10 of the Ohio Administrative Code (2004).

57. The allegations of criminal misconduct made by Defendant *John Doe* against Plaintiff, which were calculated to injure Plaintiff's contractual relationship with Defendant GE, have subjected Plaintiff to ridicule and have caused Plaintiff to suffer personal humiliation, mental anguish, and degradation of his reputation.

58. As a direct and proximate result of the libelous accusations made against Plaintiff by Defendant *John Doe*, Plaintiff has suffered and will continue to

suffer personal, professional, and financial injury.

COUNT 9

(Slander - *John Doe*)

59. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 58 as if fully rewritten herein.

60. Sometime before June 25, 2004, without any provocation or notice to Plaintiff, Defendant *John Doe* falsely and maliciously alleged to others through verbal communications that Plaintiff had ordered an employee under eighteen years of age to operate hazardous machinery in violation of federal and state laws including 29 C.F.R. § 570.63 (2004), section 4109.05 of the Ohio Revised Code Annotated (West 2004), and section 4101:9-2-10 of the Ohio Administrative Code (2004).

61. The allegations of criminal misconduct made by Defendant *John Doe* against Plaintiff, which were calculated to injure Plaintiff's contractual relationship with Defendant GE, have subjected Plaintiff to ridicule and have caused Plaintiff to suffer personal humiliation, mental anguish, and degradation of his reputation.

62. As a direct and proximate result of the slanderous accusations made against Plaintiff by Defendant *John Doe*, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 10

(Tortious Interference with Employment/Contractual Relationship - John Brigadier)

63. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 62 as if fully rewritten herein.

64. The false allegations of sexual harassment maliciously made against Plaintiff by Defendant John Brigadier were not within the scope of his duties as an employee of Defendant GE and were made solely within his individual capacity and for his personal benefit by attempting to secure a more lax working environment under the supervision of a more lenient supervisor.

65. As a direct and proximate result of Defendant John Brigadier's tortious interference with the employment/contractual relationship between Plaintiff and Defendant GE, for which Plaintiff's demotion and subsequent discharge by Defendant GE is directly attributed, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 11

(Tortious Interference - Sue Brigadier and David Brigadier)

66. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 65 as if fully rewritten herein.

67. The libelous and slanderous allegations of sexual harassment jointly and severally made

against Plaintiff by Defendants Sue Brigadier and David Brigadier were made with malicious intent and were made for their joint and several benefit by attempting to vicariously obtain damages from Defendant GE and by attempting to obtain a more lax working environment for their son, Defendant John Brigadier.

68. At all times herein stated, neither Defendant Sue Brigadier nor Defendant David Brigadier had any form of employment, business, or contractual relationship with either Plaintiff or Defendant GE.

69. As a direct and proximate reslt of the tortious interference with the employment/contractual relationship between Plaintiff and Defendant GE by Defendants Sue Brigadier and David Brigadier, for which Plaintiff's demotion and subsequent discharge by Defendant GE is directly attributed, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 12

(Tortious Interference with Employment/Contractual Relationship - *John Doe*)

70. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 69 as if fully rewritten herein.

71. As a non-supervisory employee of Defendant GE, the allegations made by Defendant *John Doe* that Plaintiff had ordered an employee under eighteen years of age to operate hazardous machinery in violation of federal and state laws, including 29

C.F.R. § 570.63 (2004), section 4109.05 of the Ohio Revised Code Annotated (West 2004), and section 4101:9-2-10 of the Ohio Administrative Code (2004), were not within the scope of his duties and were made solely within his individual capacity.

72. Defendant *John Doe* made the aforesaid allegations against Plaintiff with knowledge that they were false and with the justifiable expectation and desire that others, including Defendant Lenson, would accept them as true.

73. The allegations made to others against Plaintiff by Defendant *John Doe* were made with an underlying malicious intent and were made for his personal benefit by attempting to secure a more lax working environment under the supervision of a more lenient supervisor.

74. As a direct and proximate result of Defendant *John Doe's* fraud upon others, which has tortiously interfered with the employment/contractual relationship between Plaintiff and Defendant GE and has caused Plaintiff's demotion and subsequent discharge by Defendant GE, Plaintiff has suffered and will continue to suffer personal, professional, and financial injury.

COUNT 13

(Civil Conspiracy to Defame)

75. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 74 as if fully rewritten herein.

76. The defamatory allegations made by

Defendants John Brigadier, Sue Brigadier, David Brigadier, Lenson, GE by and through its employees, *John Doe*, and other employees of Defendant GE not yet named as defendants, were made with malicious intent and in concert among the Defendants for the purpose of injuring Plaintiff in his person.

77. The concerted actions undertaken by Defendants as set forth in paragraph 76, above, have caused injury to Plaintiff in the form of ridicule and degradation of his reputation which has, in turn, resulted in his demotion, loss of his employment, and impairment of his future earning capacity.

COUNT 14

(Civil Conspiracy to Tortiously Interfere with Employment/Contractual Relationship)

78. Plaintiff repeats and incorporates by reference all material allegations set forth in paragraphs 1 through 77 as if fully rewritten herein.

79. The actions undertaken by Defendants John Brigadier, Sue Brigadier, David Brigadier, Lenson, *John Doe*, and other employees of Defendant GE not yet named as defendants, to tortiously interfere with the employment/contractual relationship between Plaintiff and Defendant GE were done so in concert among the Defendants and were carried out with malicious intent to injure Plaintiff.

80. The concerted actions undertaken by Defendants as set forth in paragraph 79, above, have caused personal, professional, and financial injury to

Plaintiff including his demotion and subsequent discharge by Defendant GE.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants as follows:

a. Court order enjoining Defendants from continued publication of the defamatory allegations made against Plaintiff as set forth above.

b. Compensatory and punitive damages in excess of $25,000.

c. Cost of suit.

d. Such other relief as the court deems just.

Respectfully submitted,

Dated: August 5, 2004

/s

Matthew A. Craig
11325 Cheyenne Trail
Suite 302
Parma Heights, OH 44130
440-888-2280

Private Party Civil Cases Denied Oral Argument Pursuant to Sixth Circuit Rule 34(j) (April 1, 2005 - March 31, 2006)

* = cases *not* involving a pro se party.

04-1048	04-5946	05-3474
04-1460	04-5964	05-3504
04-1498	*04-6120	05-3550
04-1609	04-6212	05-3553
04-1617	04-6231	05-3612
04-1698	04-6256	05-3807
04-1701	04-6366	05-3837
04-1795	04-6423	05-3878
04-1905	04-6492	05-3977
04-2155	05-1003	05-5015
04-2261	05-1141	05-5071
04-2265	05-1370	05-5083
04-2290	05-1406	05-5099
04-2316	05-1464	05-5129
04-2336	05-1554	05-5164
04-2352	05-1614	05-5441
04-2399	05-1648	05-5443
04-3161	05-1725	05-5495
04-3162	05-1794	05-5519
04-3270	05-1957	05-5542
*04-3304	05-3021	05-5608
04-3995	05-3070	05-5627
04-4194	05-3115	05-5882
04-4244	05-3194	
04-4248	05-3206	
04-4256	05-3209	

04-4279	05-3220
04-4302	05-3222
04-4360	05-3225
04-4412	05-3415
04-5889	05-3463